



## DEPARTMENT OF JUSTICE

Antitrust Division

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May 30, 1997

Glenn A. Mitchell, Esquire  
Stein, Mitchell & Mezines  
1100 Connecticut Ave., N.W.  
Washington, D.C. 20036

Dear Mr. Mitchell;

This is in response to your request on behalf of the National Elevator Industry, Inc. ("NEII") for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice's antitrust enforcement intentions with respect to a proposal by NEII to participate in a joint venture designed to produce a performance standard related to escalator safety.

The NEII is a trade association whose thirty four members include virtually all major domestic manufacturers and installers of escalators. While NEII believes that escalators currently are very safe, i.e., the number of accidents occurring thereon are relatively few in light of the large number of persons that use them, in response to concerns expressed by the United States Consumer Product Safety Commission ("CPSC") NEII is willing to participate in the development of a more comprehensive performance standard for escalators.

You've indicated that some of the accidents that occur on escalators result from the victim catching either a foot or article of clothing between the step tread and the adjacent step-skirt panel. While the current American Society of Mechanical Engineers ("ASME") escalator standard, ASME A.17.1, provides that the clearance on each side of the steps between the step tread and adjacent skirt panel be not more than 3/16 of an inch, you indicated that that standard does not comprehensively measure or characterize the potential for entrapment between an escalator

step and skirt. Indeed, you assert that at present the escalator industry does not possess a uniform testing procedure to measure and index the relationship among the factors most critical to escalator safety.

NEII proposes to set up a joint venture relationship with an independent consultant in the hope of developing a more comprehensive escalator safety performance standard. It proposes to select an independent consultant who, after discussing the issues with NEII members and outsiders, will create a concept for developing a performance standard that measures the potential for step-skirt entrapment and a methodology for measurement and verification of compliance with the standard. Based on proof of concept experiments, the consultant will develop an index that indicates acceptable performance levels. The standard developed by the consultant and NEII's CPSC advisory committee will be submitted to NEII's Central Code Committee, which will determine whether to submit the developed standard to the ASME for review and adoption under that organization's standard making procedures.

The ASME, according to your letter, is a nonprofit organization that promulgates and publishes over four hundred separate codes and standards relating to different engineering and industry issues. These standard making procedures are based, according to your assertions, on concepts of public notice and consideration of conflicting points of view before a consensus is reached.

You assert that the proposed joint venture will not have any adverse effect on competition because it is not undertaken for any anticompetitive purpose, will consider the views of non-members, will not disadvantage non-members, and will not involve the exchange of any price or output information.

On the basis of the information and assurances that you have provided the Department, it does not appear that the proposed joint venture between an independent consultant and NEII to develop a more comprehensive escalator safety standard for possible submission to ASME for its review and adoption will have an anticompetitive effect. Since the

proposed new standard has not yet been developed, we, of course, can express no opinion as to its likely competitive effect, if any. To the extent, however, that NEII's proposed joint venture to establish a new escalator performance safety standard will neither involve the exchange of any competitively sensitive information, nor be designed to disadvantage non-members, it should not in itself raise competitive concerns.

For these reasons, the Department is not presently inclined to initiate antitrust enforcement action against NEII's proposal. This letter, however, expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of the proposed joint venture standard creating conduct proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

Joel I. Klein  
Acting Assistant Attorney General